

EXHIBIT B

**MICROSOFT CONFIDENTIAL FINANCIAL INFORMATION -
OUTSIDE ATTORNEYS' EYES ONLY - SUBJECT TO PROTECTIVE ORDER**

HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

vs.

MOTOROLA, INC., and MOTOROLA
MOBILITY, INC.,

Defendants

Case No. 2-10-cv-01823-JLR

MICROSOFT CORPORATION'S
**APRIL 12, 2013 SUPPLEMENTAL
DISCLOSURES** PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 26(a)(1)(A)(i) and (iii)

Plaintiff Microsoft Corporation ("Microsoft") hereby provides a supplement to its
initial disclosures, pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(i) and (iii).

Microsoft provides these supplemental disclosures based on the currently available information
and materials. Microsoft reserves the right to supplement these disclosures based on additional
information or evidence subsequently identified, discovered, offered, or introduced.

Information subject to the attorney-client privilege, work product doctrine, or any other
applicable privilege has not been disclosed.

MICROSOFT'S 4/12/13 SUPPLEMENTAL
DISCLOSURES PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 26(a)(1)(A)(i),
(iii) - 1

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A. Rule 26(a)(1)(A)(i).

1. Current and former employees of Microsoft include, but are not limited to:

a. Horacio Gutierrez
Microsoft Corporation
One Microsoft Way
Redmond, WA 98052

Mr. Gutierrez is Microsoft's Corporate Vice President and Deputy General Counsel, Intellectual Property and Licensing, and may have knowledge regarding Motorola's license demand letters dated October 21, 2010 and October 29, 2010. Mr. Gutierrez may be contacted through undersigned counsel.

b. Bart Eppenauer
Microsoft Corporation
One Microsoft Way
Redmond, WA 98052

Mr. Eppenauer is Microsoft's Chief Patent Counsel and may have knowledge regarding the applicable standards and licensing of standards-related patents. Mr. Eppenauer may be contacted through undersigned counsel.

2. Current and former employees of Motorola, Inc., Motorola Mobility, Inc., and General Instrument Corporation likely to have discoverable information on subjects including, but not limited to, the following: Motorola's October 21, 2010 and October 29, 2010 demand letters to Microsoft; Motorola's participation in the adoption and implementation of the WLAN/802.11 and/or H.264 standards; licensing terms offered by Motorola to persons or entities for licenses to Motorola's patented technology it claims is essential to implementation of the WLAN and/or H.264 standards; terms upon which Motorola has accepted licenses from other entities for patented technology necessary for implementation of the WLAN and/or H.264 standards; development of Motorola's allegedly "essential" patents; and Motorola's efforts to protect its allegedly "essential" patents from infringement. Individuals in this category who are likely to have discoverable information include, but are not limited to:

a. Kirk Dailey
c/o Summit Law Group PLLC

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b. Ajay Luthra
c/o Summit Law Group PLLC

3. All individuals likely to have discoverable information listed in Defendants' Initial Disclosures.

4. The following individuals are likely to have discoverable information, or otherwise are likely to know relevant facts about, the standards at issue in this lawsuit, and/or Defendants' commitments to make licenses available on RAND terms:

a. IEEE-SA Standards Board
445 Hoes Lane
Piscataway, NJ 08854
Phone: (732) 981-0060

b. International Telecommunications Union
Place des Nations
1211 Geneva 20
Switzerland
Phone: 41 22 730 5111

Microsoft has not yet identified its testifying expert witnesses but will provide information consistent with the expert witness disclosure deadlines established by the Court and the Federal Rules.

By way of further disclosure, Microsoft also refers to those persons identified in any documents produced or referenced in conjunction with these Initial Disclosures, and to any witness identified in any depositions or answers to discovery by the parties.

Rule 26(a)(1)(A)(i): April 12, 2013 Supplemental Disclosures

Microsoft expects to rely on one or more of the following fact witnesses to provide testimony at trial regarding the subject matter identified below. Each potential witness may be contacted through undersigned counsel.

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1
2 a. David Killough
3 Assistant General Counsel
4 Microsoft Corporation
5 One Microsoft Way
6 Redmond, WA 98052

7
8 Mr. Killough is expected to testify at trial regarding Microsoft's damages, including
9 the attorneys' fees and litigation costs and expenses incurred by Microsoft in connection with
10 the 1823 Action, 343 Action, 700 Action, ITC Action and the German Actions (all as defined
11 below).

12
13 b. Jeff Davidson
14 General Manager, Global Supply Chain Operations
15 Microsoft Corporation
16 One Microsoft Way
17 Redmond, WA 98052

18 Mr. Davidson is expected to testify at trial regarding, among other things, the costs
19 associated with relocation of Microsoft's EMEA operations from Germany to the Netherlands
20 in 2012. Mr. Davidson also has knowledge regarding Microsoft's decision to relocate
21 Microsoft's EMEA operations from Germany to the Netherlands in spring 2012, as well as
22 operational aspects of Microsoft's EMEA distribution network.

23
24 c. Jon DeVaan
25 VP of Development for Windows
Microsoft Corporation
One Microsoft Way
Redmond, WA 98052

Mr. DeVaan is expected to testify at trial regarding, among other things, relevant
features and functionality provided by Microsoft software, including but not limited to
Windows. Mr. DeVaan may also be called to testify at trial regarding the extent of the
financial and non-economic harm generally associated with Motorola's threat of an injunction
and related wrongful conduct in relation to its claimed H.264 Standard Essential Patents and
that which Microsoft would have suffered had the German Injunction (as defined below)
become effective.

22 d. Leo Del Castillo
23 General Manager, Xbox Hardware Development
24 Microsoft Corporation
25 One Microsoft Way
Redmond, WA 98052

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1 Mr. Del Castillo is expected to testify at trial regarding, among other things, relevant
2 features and functionality included in Microsoft products, including the Xbox 360, as well as
3 the technical complexities and commercial difficulties associated with the design and
4 development of Xbox products in relation to standard-compliant technology.

5 e. Marcello Prieto
6 Senior Director, Volume Licensing Programs
7 Microsoft Corporation
8 One Microsoft Way
9 Redmond, WA 98052

10 Mr. Prieto is a possible trial witness, who may be called to testify regarding the extent
11 of the financial and non-economic harm that Microsoft would have suffered had the German
12 Injunction become effective, particularly as it relates to Microsoft's volume licensing
13 programs.

14 f. Josh Hutto
15 Director of Platform Marketing, IEB Global Marketing
16 Microsoft Corporation
17 One Microsoft Way
18 Redmond, WA 98052

19 Mr. Hutto is a possible trial witness, who may be called to testify regarding the extent
20 of the financial and non-economic harm that Microsoft would have suffered had the German
21 Injunction become effective, particularly as it relates to Microsoft's Xbox 360 console,
22 services, games and accessories.

23 Microsoft also incorporates by reference the witness disclosures set forth in the
24 proposed Pretrial Order jointly submitted by the Parties on October 24, 2012.

25 **C. Rule 26(a)(1)(A)(iii).**

Microsoft claims its damages arising out of Defendants' breaches of their contractual
commitments to the IEEE-SA, ITU-T, and Microsoft, as well as Microsoft's damages arising
out of its reliance on Defendants' promise that they would license any essential patents on
RAND terms and conditions. Microsoft also seeks injunctive and declaratory relief. Without
the benefit of discovery, Microsoft is not able at this time to provide a computation of
damages, but will seek all damages available under law. Microsoft's damages include those

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1 that it has suffered as a result of defending against Defendants' actions in the District Court for
2 the Western District of Wisconsin and before the ITC to enjoin or exclude Microsoft from
3 practicing the WLAN/802.11 and H.264 standards.

4 **Rule 26(a)(1)(A)(iii): April 12, 2013 Supplemental Disclosures**

5 Microsoft incorporates by reference its responses to Defendants' Interrogatory Nos. 3
6 and 4, as supplemented on April 3, 2013. Microsoft also incorporates by reference the
7 evidence presented during the November 2012 RAND trial in the above-captioned matter.

8 In further response, Microsoft states that the damages it will be seeking at the breach of
9 contract trial scheduled to begin on August 26, 2013, include certain costs and expenses
10 incurred by Microsoft as a result of Defendants' breaches of contract, including in connection
11 with the following actions:

- 12 • The above-captioned matter, Case No. 2-10-cv-01823-JLR (the "1823 Action").
- 13 • *Motorola Mobility, Inc. and General Instrument Corporation v. Microsoft*
14 *Corporation*, Case No. 3:10-cv-699, District Court for the Western District of
15 Wisconsin, filed on November 10, 2010, subsequently assigned Case No. 2:11-cv-
16 00343-JLR upon transfer to this Court on February 28, 2011 (the "343 Action") and
17 consolidated with the 1823 Action.
- 18 • *Motorola Mobility, Inc. and General Instrument Corporation v. Microsoft*
19 *Corporation*, Case No. 3:10-cv-700, District Court for the Western District of
20 Wisconsin, filed on November 10, 2010 (the "700 Action").
- 21 • *In the Matter of Certain Gaming and Entertainment Consoles, Related Software,*
22 *and Components Thereof*, International Trade Commission ("ITC") Case No. 337-
23 TA-752, filed on November 22, 2010 (the "ITC Action").
- 24 • The "German Actions" consisting of (a) the following four consolidated actions
25 filed on July 6-7, 2011, in the German regional court located in Mannheim,
Germany: *General Instrument Corporation v. Microsoft Deutschland GmbH*, Case
No. 2 O 240/11; *General Instrument Corporation v. Microsoft Deutschland GmbH*,
Case No. 2 O 373/11; *General Instrument Corporation v. Microsoft Corporation*
and Microsoft Ireland Operations Ltd., Case No. 2 O 376/11; *General Instrument*
Corporation v. Microsoft Ireland Operations Ltd., Case No. 2 O 387/11, and (b)

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Microsoft Corp. v. General Instrument Corp., (Case No. 5 Ni 62/11) (Federal Patent Court of Germany); *Microsoft Corp. v. General Instrument Corp.*, (Case No. 5 Ni 63/11) (Federal Patent Court of Germany).

The monetary relief Microsoft seeks for the damages it has suffered in connection with the 1823 Action, 343 Action, 700 Action, ITC Action, and the German Actions as a result of Defendants' breaches of contract broadly falls into two categories.

The first category of monetary damages sought by Microsoft consists of the attorneys' fees and other litigation costs and expenses that Microsoft incurred as a consequence of Defendants' breaches of contract. In particular, as a result of Defendants' breaches of contract, Microsoft incurred fees and related litigation expenses (including expert costs) in connection with the services provided by the following law firms engaged to represent Microsoft in the 1823 Action, 343 Action, 700 Action, ITC Action and German Actions:

- Sidley Austin LLP.
- Freshfields Bruckhaus Deringer.
- Boehmert & Boehmert.
- Klarquist Sparkman, LLP.
- Calfo Harrigan Leyh & Tollefson, LLP (formerly DHLT, LLP).
- Michael Best & Friedrich, LLP.

Microsoft is not seeking to recover the full amount invoiced by all law firms for every aspect of the relevant actions listed above. Microsoft is in the process of reviewing and redacting potentially relevant invoices in order to identify and segregate the items for which it seeks recovery. Given the number of law firms and legal actions involved and the considerable volume of invoices generated from the time Microsoft received Motorola's October 2010 demand letters to the present, this has proven to be a time-consuming process. Microsoft expects to conclude this process by the week of April 15. Calculation of the total dollar

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1 amount of the damages in this category is expected to require expert analysis of the relevant
2 invoices once this process is complete.

3 Supporting documentation for certain of the above-described damages already has been
4 produced at Bates range MS-MOTO_1823_0006000001 – MS-MOTO_1823_0006000131.
5 Additional supporting documentation, including the remainder of the invoices referenced
6 above, is being reviewed and processed and will be produced on a rolling basis, as it becomes
7 available.

8 The second main category of monetary damages sought by Microsoft consists of the
9 cost of measures taken to mitigate losses anticipated from the potential award of the injunctive
10 relief that Defendants sought in Germany. The relief Defendants sought was an order
11 enjoining Microsoft from (a) offering, distributing, using or importing its Xbox 360 game
12 console in Germany and (b) offering or supplying its software products that support decoding
13 according to the H.264 standard in Germany, including Microsoft's Windows 7 operating
14 system software. In fact, such an order was issued in Germany on May 2, 2012 (the "German
15 Injunction").

16 Had the German Injunction become effective, Microsoft would have suffered
17 significant financial and non-economic harm, as partially described in Microsoft's filings in
18 support of its March 28, 2012, Motion for TRO and Preliminary Injunction, including the
19 declarations of Peter Chrocziel, Josh Hutto and Marcelo Prieto (*see* Dkt. Nos. 209-217).

20 Microsoft took reasonable steps to mitigate the enormous financial and non-economic
21 harm it would have suffered had the German Injunction become effective. These steps
22 included relocating its main logistics and products/software distribution center for the
23 European, Middle Eastern and African ("EMEA") market from its location in Germany to the
24 Netherlands in spring 2012.

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1 The costs associated with the EMEA relocation efforts were approximately \$11.6
2 million, consisting of the following main components:

- 3 • \$9,576,000 (Euro 7,600,000) -- Fixed fee for start-up distribution and
4 warehouse services in the Netherlands;
- 5 • \$630,000 (Euro 500,000) – Exit costs for termination of German vendor
6 services;
- 7 • \$337,179 – Fixed fee for June 2012 German warehouse costs;
- 8 • \$319,782 – Carrier freight for stock move to new facilities in the Netherlands;
- 9 • \$265,394 – German BEFF for stock move to new facilities in the Netherlands;
- 10 • \$53,015 – Security for stock move to new facilities in the Netherlands;
- 11 • \$152,868 – Costs to develop new vendor in the Netherlands; and
- 12 • \$278,460 – Microsoft trade, tax and finance costs.

13 In addition to the above costs, Microsoft is suffering ongoing damages as a result of the
14 higher cost of operating its EMEA distribution network in the Netherlands. The annual cost of
15 operating out of the Netherlands is approximately \$5,000,000 greater than the cost of operating
16 out of Germany.

17 Supporting documentation for certain of the above-described damages already has been
18 produced at Bates range MS-MOTO_1823_00004081413 – MS-MOTO_1823_00004081541.
19 Additional supporting documentation is being gathered, reviewed and processed and will be
20 produced on a rolling basis, as it becomes available.

21 **Reservation of Rights.**

22 Microsoft's supplemental disclosures are based upon a good-faith effort to obtain
23 information reasonably available to it at this time. Microsoft reserves the right to further
24

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supplement these disclosures as additional information and materials are identified and become available.

DATED this 12th day of April, 2013.

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CERTIFICATE OF SERVICE

I, Linda Bledsoe, swear under penalty of perjury under the laws of the State of Washington to the following:

1. I am over the age of 21 and not a party to this action.

2. On the 12th day of April, 2013, I caused the preceding document to be served on counsel of record in the following manner:

Attorneys for Motorola Solutions, Inc., and Motorola Mobility, Inc.:

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DATED this 12th day of April, 2013.

s/ Linda Bledsoe
LINDA BLEDSOE